IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION

Dated : Nainital the 29th day of June 2005
Criminal Misc. Bail Application No.99/2005
Order on the bail application of accused

CRIMINAL SIDE

Constable Vinod Kumar
S/o Sri Late Shri Kashmir Singh
R/o village & Post Office Malhendi
P.S. Gaddi Pukhta
District Muzaffar Nagar
At present address Constable No.19,
Police Line Sumer Pur
P.S. Rudraprayag
District Rudraprayag .....Applicant

Versus

State of Uttaranchal .....Opposite Party

Arising out of case crime No.357/2004
U/s 363, 366, 376 I.P.C.
P.S. Rudraprayag
District - Rudraprayag

Hon'ble J. C. S. Rawat, J.

Heard Sri S. P. S. Panwar learned senior Advocate & Sri Sandeep Tandon learned counsel for the applicant and Sri H. C. Pandey learned A.G.A. for the State.

Perused the record. According to the prosecution version, the victim came on 28.11.2004 at Rudraprayag to purchase some items. The applicant enticed her and taken away to the 'Mela'. When they came from 'Mela' in the evening, the applicant asked her to stay with the lady police at his residence. Thereafter, the applicant committed the rape upon her in his house during the whole night. Statements recorded under sections 161 & 164 Cr.P.C. were recorded by the prosecution. It has been alleged in the FIR that there was love affairs between them.

The learned counsel for the applicant has referred the decision of the Hon'ble Supreme Court in **Rafiq Vs. State of U.P. 1980 SCC (Cri) p/947** in which it has been held that the argument cannot be accepted that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed

to a Bench in one reported decision must mechanically be extended to other case. Whereas, the prosecution relied upon the decision of the Hon'ble Supreme Court in **State of M.P. Vs. Munna Choubey and another 2005 SCC (Cri) p/559** in which it has been held that the offence of rape in its simplest term is "the ravishment of a women, without her consent, by force, fear or fraud", or carnal knowledge of a woman by force against her will'. The learned counsel for the applicant contended that aforesaid case is not applicable in the present circumstances of the case and it cannot be extended mechanically to other case. Perusal of the pathological report shows that there is no evidence of spermatozoa. Gynological report of p/v shows there is no evidence of hymen or any torn or any injury on private parts of the victim. The learned counsel for the applicant contended that the medical report is not corroborating the incident as alleged by the prosecution.

Considering the facts, contentions of the parties and totality of the circumstances of the case, it is a fit case for bail.

Let the applicant-accused be released on bail on executing a personal bond and two sureties each in the like amount to the satisfaction of the C.J.M. concerned.

(J. C. S. Rawat, J.)

Dated 29.06.2005

LSR